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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO HEADQUARTERS**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 NATURE'S FARM PRODUCTS, INC.,)
 DENNIS CHOI, and PETER PIZZO,)
)
 Defendants.)

No. C 04-2068 VRW

**STIPULATED SETTLEMENT
 AGREEMENT AND ~~PROPOSED~~
 ORDER BETWEEN THE UNITED
 STATES AND DEFENDANT PETER
 PIZZO**

I. PARTIES

This Stipulated Settlement Agreement and Order ("Stipulation and Order") is entered into between the United States of America (the "United States"), by its attorney Kevin V. Ryan, United States Attorney for the Northern District of California, and Peter Pizzo ("Pizzo"), through their authorized representatives.

II. PREAMBLE

WHEREAS, on or about September 1, 2000, a qui tam action was filed in the United States District Court for the Southern District of New York (the "Civil Action"); and

1 WHEREAS, the United States intervened in the Civil Action on October 10, 2003, and
2 filed the Complaint of the United States on October 10, 2003; and

3 WHEREAS, this action was subsequently transferred to this Court by order dated May
4 13, 2004; and

5 WHEREAS, the Complaint of the United States alleges that it has certain civil claims
6 against Pizzo pursuant to the False Claims Act, 31 U.S.C. §§ 3729 et seq., and under the
7 common-law theories alleged in the Complaint of the United States; and

8 WHEREAS, this Stipulation & Order covers all of the conduct alleged in the Complaint of
9 the United States (hereinafter referred to as the "Covered Conduct"); and

10 WHEREAS, Pizzo hereby consents to the entry of this Stipulation and Order, without
11 admitting any wrongdoing or liability under the False Claims Act and/or the common law; and

12 WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted
13 litigation of the above claims, Pizzo and the United States desire to reach a full and final
14 settlement and compromise of the claims that the United States asserts in the Complaint of the
15 United States.

16 III. TERMS AND CONDITIONS

17 NOW, THEREFORE, Pizzo and the United States, in consideration of the mutual
18 promises, obligations, undertakings, and commitments hereinafter set forth, do hereby covenant
19 and agree as follows:

20 1. Pizzo and the United States consent to this Court's exercise of subject matter
21 jurisdiction over this action and personal jurisdiction over each of them. Pizzo and the United
22 States agree that the exclusive jurisdiction and venue for any dispute arising between them under
23 this Stipulation and Order will be the United States District Court for the Northern District of
24 California.

25 2. Pizzo agrees to pay, in full compromise and satisfaction of the allegations set forth
26 in the Complaint of the United States, the sum of \$27,500.00 (twenty seven thousand and five
27 hundred dollars) (the "Settlement Amount"). The Settlement Amount shall constitute a debt due
28 and owing to the United States upon the Effective Date of this Stipulation and Order and is to be

1 discharged by payment to the United States within twenty (20) business days of the entry of this
2 Stipulation and Order. The Settlement Amount must be made in the form of a check or United
3 States money order and made payable to the "U.S. Department of Justice." The Settlement
4 Amount must be mailed to: David J. Kennedy, AUSA, United States Attorney's Office, 86
5 Chambers Street, 3rd Floor, New York, NY 10007.

6 3. Subject to the exceptions in Paragraph 6 below, in consideration of the obligations
7 of Pizzo in this Stipulation and Order, conditioned upon Pizzo's full payment of the Settlement
8 Amount, and subject to Paragraph 10 below (concerning bankruptcy proceedings commenced
9 within 91 days of the Effective Date of this Agreement), the United States (on behalf of itself, its
10 officers, agents, agencies, and departments) agrees to release Pizzo from any civil claim the
11 United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§
12 3729-3733; or the common law theories alleged in the Complaint of the United States.

13 4. Pizzo agrees to release the United States, its agencies, employees, servants, and
14 agents from any claims (including attorneys' fees, costs, expenses of every kind and however
15 denominated), which Pizzo has asserted, could have asserted, or may assert in the future against
16 the United States related to the matters covered by the Complaint of the United States, and the
17 United States' investigation and prosecution thereof and this Stipulation and Order.

18 5. This Stipulation and Order is intended to be for the benefit of the parties to this
19 Stipulation and Order only, and by this instrument the parties to this Stipulation and Order do not
20 release any claims against any other person or entity, except as expressly provided by this
21 Stipulation and Order.

22 6. Notwithstanding any term of this Stipulation and Order, including the releases
23 provided in Paragraphs 3 and 4, any and all of the following are specifically reserved and excluded
24 from the scope and terms of this Stipulation and Order as to any entity or person:

- 25 a. Any civil, criminal or administrative liability arising under Title 26, U.S.
26 Code (Internal Revenue Code);
- 27 b. Any criminal liability;
- 28 c. Any administrative liability;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any claims based upon such obligations as are created by this Stipulation and Order.

7. In the event of a criminal prosecution or administrative action relating to the Covered Conduct, Pizzo waives and will not assert any defenses he may have based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation and Order bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Stipulation and Order constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. Pizzo has provided sworn financial disclosure statements and other financial information ("Financial Statements") to the United States, and the United States has relied on the accuracy and completeness of those Financial Statements in agreeing to this Stipulation and Order. Pizzo warrants that the Financial Statements are thorough, accurate, and complete. Pizzo further warrants that he does not own or have an interest in any assets which have not been disclosed in the Financial Statements, and that he has made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of: (a) asset(s) in which Pizzo had an interest at the time of this Stipulation and Order that would change the estimated net worth of Pizzo set forth in the Financial Statements by ten thousand dollars (\$10,000) or more, and which were not disclosed in such Financial Statements; or (b) a misrepresentation by Pizzo on, or in connection with, the Financial Statements, and in the event such non-disclosure or misrepresentation changes the estimated net worth of Pizzo set forth on the Financial Statements by ten thousand dollars (\$10,000) or more; the United States may at its option: (1) rescind this Stipulation and Order and reinstate its Complaint in this action; or (2) let the Stipulation and Order stand and collect the full Settlement Amount, to which will automatically be added one hundred percent (100%) of the value of the net worth of Pizzo

1 previously undisclosed or concealed or dissipated, if such latter amounts can be determined. To
2 the extent that the United States discovers the occurrence of an event(s) encompassed by subparts
3 (a) through (b) of this Paragraph, Pizzo agrees not to contest any collection action undertaken by
4 the United States pursuant to this provision.

5 9. Pizzo warrants that he has reviewed his financial situation and that he currently is
6 solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain
7 solvent following payment to the United States of the Settlement Amount. Further, the Parties
8 warrant that, in evaluating whether to execute this Stipulation and Order, they (a) have intended
9 that the mutual promises, covenants, and obligations set forth constitute a contemporaneous
10 exchange for new value given to Pizzo, within the meaning of 11 U.S.C. § 547(c)(1); and (b)
11 conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a
12 contemporaneous exchange. Further, Pizzo and the United States warrant that the mutual
13 promises, covenants, and obligations set forth herein are intended and do, in fact, represent a
14 reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any
15 entity to which Pizzo was or became indebted on or after the date of this transfer, within the
16 meaning of 11 U.S.C. § 548(a)(1).

17 10. If within 91 days of the Effective Date of this Stipulation and Order or of any
18 payment made hereunder, Pizzo commences, or a third party commences, any case, proceeding,
19 or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of
20 debtors, (a) seeking to have any order for relief of Pizzo's debts, or seeking to adjudicate Pizzo as
21 bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other
22 similar official for Pizzo or for all or any substantial part of Pizzo's assets, Pizzo agrees as
23 follows:

24 a. Pizzo's obligations under this Stipulation and Order may not be avoided
25 pursuant to 11 U.S.C. § 547, and Pizzo will not argue or otherwise take the position in any such
26 case, proceeding, or action that: (i) Pizzo's obligations under this Stipulation and Order may be
27 avoided under 11 U.S.C. § 547; (ii) Pizzo was insolvent at the time this Stipulation and Order was
28 entered into, or became insolvent as a result of the payment made to the United States; or (iii) the

1 mutual promises, covenants, and obligations set forth in this Stipulation and Order do not
2 constitute a contemporaneous exchange for new value given to Pizzo.

3 b. If Pizzo's obligations hereunder are avoided for any reason, including, but
4 not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code,
5 the United States, at its sole option, may rescind the releases in this Stipulation and Order, and
6 bring any civil and/or administrative claim, action, or proceeding against Pizzo for the claims that
7 would otherwise be covered by the releases provided in Paragraphs 3 and 4 above. Pizzo agrees
8 that (i) any such claims, actions, or proceedings brought by the United States are not subject to an
9 automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding
10 described in the first clause of this Paragraph, and that Pizzo will not argue or otherwise contend
11 that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Pizzo
12 will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations,
13 laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or
14 proceeding which are brought by the United States within 30 (thirty) calendar days of written
15 notification to Pizzo that the releases have been rescinded pursuant to this Paragraph, except to
16 the extent such defenses were available on October 10, 2003; and (iii) the United States has a
17 valid claim against Pizzo in the amount of \$27,500.00, and the United States may pursue its claim
18 in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any
19 other case, action, or proceeding.

20 c. Pizzo acknowledges that the agreements in this Paragraph are provided in
21 exchange for valuable consideration provided in this Stipulation and Order.

22 11. Pizzo shall be in default of this Stipulation and Order if he fails to make the
23 payment set forth in Paragraph 2 on or before the specified due dates. The United States will
24 provide written notice of the default to Pizzo, and Pizzo shall have an opportunity to cure such
25 default within ten (10) business days from the date of his receipt of the notice. Notice of default
26 will be sent by fax and overnight mail to the undersigned attorneys for Pizzo. If Pizzo fails to
27 cure the default within ten (10) business days, the entire Settlement Amount shall be immediately
28 due and payable, and interest shall accrue at the rate of 10% per annum compounded daily from

1 the date of default on the remaining unpaid principal balance. The United States, at its option,
2 may: (a) rescind this Stipulation and Order and reinstate as against Pizzo the Complaint of the
3 United States filed in this action; (b) seek specific performance of the Stipulation and Order; (c)
4 seek entry of Judgment against Pizzo for any portion of the Settlement Amount that remains
5 unpaid; (d) offset the remaining unpaid balance from any amounts due and owing Pizzo by any
6 department, agency or agent of the United States at the time of default; and (e) exercise any other
7 rights granted by law, or under the terms of this Stipulation and Order, or recognizable at
8 common law or in equity. Pizzo agrees not to contest any offset imposed and not to contest any
9 collection action undertaken by the United States pursuant to this paragraph, either
10 administratively or in any State or Federal court. In addition, Pizzo shall pay the United States all
11 reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and
12 expenses.

13 In the event that Pizzo fails to make the payment set forth in Paragraph 2 on or before its
14 due date, and the United States opts to rescind this Stipulation and Order, Pizzo expressly agrees
15 not to plead, argue or otherwise raise any defenses under the theories of statute of limitations,
16 laches, estoppel or similar theories, to any civil or administrative claims which relate to the
17 Conduct, except to the extent these defenses were available on the date of entry of this Stipulation
18 and Order.

19 12. The Parties each will bear their own legal and other costs incurred in connection
20 with this matter, including costs incurred in connection with the preparation and performance of
21 this Stipulation and Order.

22 13. This Stipulation and Order is governed by the laws of the United States.

23 14. Subject to the exceptions in Paragraph 6, in consideration of the obligations of
24 Pizzo in this Stipulation and Order, conditioned upon Pizzo's timely full payment of the
25 Settlement Amount, this action shall be dismissed with prejudice as to Pizzo as to all claims upon
26 which the United States has intervened against Pizzo, as described in the Complaint of the United
27 States, and to the extent of, and as governed by, this Stipulation and Order. The Court shall
28

1 retain jurisdiction over this Stipulation and Order and each party to the extent that the obligations
2 herein remain unsatisfied by that party.

3 15. This Stipulation and Order constitute(s) the complete agreement between the
4 Parties. This Stipulation and Order may not be amended except by written consent of the Parties.

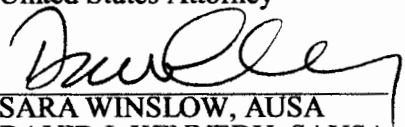
5 16. The undersigned persons signing this Stipulation and Order on behalf of Pizzo
6 represent and warrant that they are authorized by Pizzo to execute this Stipulation and Order.
7 The United States signatories represent that they are signing this Stipulation and Order in their
8 official capacities.

9 17. This Stipulation and Order may be executed in counterparts, each of which
10 constitutes an original and all of which constitute one and the same Stipulation and Order.

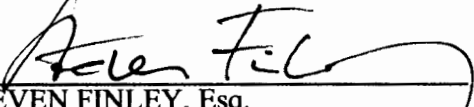
11 18. This Stipulation and Order is effective on the date that this Stipulation and Order is
12 entered by the Court.

13
14 IT IS SO STIPULATED.

15 Dated: December 14, 2005

16
17 By: 
18 KEVIN V. RYAN
United States Attorney
SARA WINSLOW, AUSA
DAVID J. KENNEDY, SAUSA
Attorneys for Plaintiff, United States of America

19 Dated: December 12, 2005

20
21 FINLEY & DEATON
22 By: 
23 STEVEN FINLEY, Esq.
Attorney for Defendant Peter Pizzo

24 Dated: December 5, 2005

25 
26 PETER PIZZO

ORDER

Pursuant to stipulation, IT IS SO ORDERED.

DATED:

December 21, 2005

